

**CITY OF FREDERICK
BOARD OF ZONING APPEALS
PROJECT STAFF REPORT**

June 23, 2015

PROJECT INFORMATION

AGENDA ITEM:	C.
NAME OF PROJECT:	351 Ballenger Center Drive
TYPE OF PROJECT:	ZBA Conditional Use
CASE NUMBER:	ZBA15-357CU
OWNER:	A.C.E., LLC C/O Edmond B. Gregory, General Manager
PROJECT ADDRESS:	351 Ballenger Center Drive Frederick, MD 21703
APPLICANT:	Cellco Partnership, d/b/a Verizon Wireless C/O Cathy G. Borten Law Offices of M. Gregg Diamond, P.C.
PHONE:	240-246-1624
ZONING:	MO (Manufacturing/Office) HNO (Highway Noise Overlay)
PROPOSED ACTION:	The Applicant is requesting approval of a conditional use per §308 and §866 of the Land Management Code (LMC) for the installation of a telecommunications tower with related antennas and ground level equipment.
EXHIBITS:	Application Applicant's Justification Statement Land Panning Report Propagation Maps Existing Tower Information Site Plan Photo simulations of the Monopole/Equipment Radio Frequency Engineer Statement FAA Summary Report Land Lease Agreement

BACKGROUND INFORMATION

The subject Property is owned by A.C.E., LLC and is also known as The Frederick News-Post Building site. The Property is zoned MO (Manufacturing/Office), a zone in which telecommunications facilities are permitted as a conditional use. The Property is

also within the HNO (Highway Noise Overlay), however the provisions of that zoning designation do not have an impact on the proposed use.

The surrounding zoning districts are as follows:

Direction	Zone
North	Interstate 270
South	MO (Manufacturing/Office)
East	Interstate 270
West	MO (Manufacturing/Office)

Per §1002 of the Land Management Code (LMC), a telecommunications facility is defined as “Any facility, excluding a satellite television dish antenna, established for the purpose of providing wireless voice, data or image transmission within a designated service area. A telecommunications facility consists of one or more antennas attached to a support structure or related equipment. Equipment may be located within a building, an equipment cabinet, or an equipment room within a building.”

The proposed telecommunications facility is to be located on the northeastern portion of the Property. The monopole construction has a finished height of 90’ and the 8’ fenced enclosure measures 50’x 50’. The monopole will allow for two telecommunications carriers (one carrier in addition to that proposed at this time).

STAFF COMMENTS & ANALYSIS

In accordance with Section 308 of the LMC, the Zoning Board of Appeals may authorize conditional uses only when the Board finds that the following conditions are met:

- 1. The proposed use is in harmony with the purpose and intent of the Comprehensive Plan and this Code.**

Applicant Responds: As noted in Mr. Landfair’s report [VIKA Maryland, LLC], the proposed use is in harmony with the purpose and intent of the Comprehensive Plan as the use does not conflict with or alter the continued primary purpose of the land for office and manufacturing purposes. The Comprehensive Plan considers the neighborhood stable with no change in land uses contemplated. The subject Property is located in the MO (Manufacturing/Office) zone, zoning that is consistent with the existing land uses depicted on the Comprehensive Plan. While the Plan does not anticipate the location of a telecommunications facility on the Property, nor does it preclude it. In addition, the proposed facility will provide cellular communications in an area of the community that is experiencing gaps in existing coverage, while also providing a structure for other carriers to collocate on.

Providing sufficient cell phone call capacity assists in the maintenance of a stable and economically viable neighborhood, thereby allowing it to remain as such. This proposed telecommunications facility, therefore, is in harmony with the purpose and intent of the Comprehensive Plan relative to this area.

Staff Response: Staff concurs with the Applicant's assessment in regards to harmony with Comprehensive Plan and the LMC. The Economic Development Element of the 2010 Comprehensive Plan cites the support of business growth through coordination with service providers to ensure reliable, redundant and high-quality electric power, telecommunications, fiber optics, and broadband services as an implementation strategy.

With regards to consistency with the LMC, Staff also concurs with the Applicant in that the LMC establishes these facilities as conditional uses which may be approved in the MO district provided that proposal complies with all of the applicable criteria established therein.

2. The characteristics of the use and its operation on the Property in question and in relation to adjacent properties will not create any greater adverse impact that the operation of any permitted use not requiring conditional use approval.

Applicant Responds: The evidence presented will show that the proposed telecommunications facility conditional use will not create any greater adverse impact than the operation of a permitted use not requiring conditional use approval. The monopole will necessarily need to be built above the height of certain surrounding features, making the top portion of the monopole generally visible. All equipment will be located within a fenced compound and well setback from adjacent properties. The facility is unmanned and will create no daily traffic as maintenance visits are estimated at approximately one per month. There is no need for stormwater management facilities due to the limited amount of land disturbance and there is no need for water and sewer. Thus, the proposed telecommunication facility will create fewer issues with regard to traffic generation, bulk, mass, noise, dust glare and imperviousness than many other permitted uses. Thus, the proposed use will not create greater adverse impact than that associated with any permitted use not requiring conditional use approval.

The current use of the Property on which the proposed telecommunications facility conditional use is to be located is a newspaper publishing and distribution facility. A portion of this Property is open land for future expansion of the newspaper facility buildings or parking lot. The proposed conditional use will not alter the use of the surrounding properties in any way. The proposed equipment platform will include a canopy and will be screened by nine large trees. The proposed conditional use is an unmanned site and will not generate any traffic to the site beyond approximately once-monthly visits for routine maintenance. The level of disturbance is less than 5,000 square feet; storm water management is not implicated. No de-forestation is required to establish the site. There is no impact on water or sewer facilities. There is no impact on fire and rescue services. The proposed conditional use does not create odors, dust, gas, smoke, fumes, vibration, glare or noise. As demonstrated by reports included with the application, the combined RF exposure at the site is below the permissible exposure levels established by the Federal Communications Commission ("FCC"). As demonstrated by photographs included with the application, the proposed

telecommunications facility is not visible from historic areas of the City and thus has no affect on historic vistas. In contrast, the site will provide much needed coverage in an unserved area. By contrast, permitted uses in the MO zone, such as office and manufacturing would create greater adverse impacts in terms of traffic, parking, storm water management, de-forestation, impact on water and sewer and fire and rescue services. As demonstrated herein, the proposed telecommunications facility conditional use will not create any greater adverse impact than the operation of a permitted use not requiring conditional use approval.

Staff Response: As previously noted, the zoning of the Property is MO. Staff concurs with the Applicant's sentiment that the proposed facility will have no greater impact in regards to traffic, noise, light pollution, air quality, water quality, or radiation on adjoining properties than those uses permitted "by right" in the MO district. Uses in the MO district include things such as assembly and production of good, medical laboratories, and academic institutions, all of which have the potential to generate high volumes of vehicular traffic. Based on the Applicant's testimony, the traffic generation by this site will be limited to maintenance vehicles and there should be no generation of noise, pollution, or radiation.

The request does not correspond with all of the standard bulk and dimensional requirements of the zoning district such as maximum height. While the height in the district is limited to 60', the proposed monopole will be constructed to 90' and is permitted to do so under the regulations of §866. While the proposal may exceed some of the standard bulk and dimensional requirements, it has been located in an area of the Property and, at a great distance from neighboring properties, where the impacts should be minimized. Through compliance with the requirements of §866 it can be determined that the effects of the proposal are mitigated and do not result in impacts on neighboring properties.

- 3. That the proposed activity will comply with all conditions and requirements set forth in this Code, including any specific standards established in Article 8.**

Applicant Responds: As set forth below, the proposed telecommunications facility will comply with all of the conditions and requirements of LMC Section 312(e)(Zoning Board of Appeals Decision Making Criteria), and 866(a)(Telecommunications Facility Conditional Uses), as well as any other applicable requirements.

Article 866, Telecommunication Facilities, (a) Conditional Uses states:

New telecommunications facilities may be permitted as a conditional use in the GC, PB, MO, M1, M2, MU, MXE, PRK and IST. The co-location of telecommunications antennas may be permitted as a conditional use on city owned water towers or high voltage electric transmission towers or athletic lighting structures over sixty (60) feet in height, on public land (including the replacement and extension of existing athletic lighting structures, over sixty (60) feet in height, on public land) in the districts listed in Table 404-1. Such new

telecommunications facilities and co-location of telecommunications antennas shall be permitted provided that all of the following conditions and requirements can be met:

- (1) The applicant shall provide guarantees as deemed necessary by the Board that the proposed structures will not be a hazard to adjacent properties or constitute a nuisance because of radio interference or other potentially disruptive activity associated with the operation of the tower or antenna.

Applicant Responds: The proposed telecommunications facility will not be a hazard to adjacent properties or constitute a nuisance due to radio interference or other potentially disruptive activity associated with the operation of a tower or antenna. The proposed Verizon Wireless facilities will not interfere with radio, television, satellite dish or any other radio signals in the area as Verizon Wireless operates on RF frequencies licensed by the FCC.

Staff Response: The Applicant has provided a sealed engineered site plan for the facility. A statement has also been provided from a radio frequency engineer indicating that the associated antennas will meet all Federal Communications Commission (FCC) requirements, and will not interfere with other communications systems per those requirements.

Please also see the attached report from Millennium Engineering, P.C., stating the proposal meets all applicable exposure levels, as adopted by the FCC and non-interference compliance.

The site plan shows the proposed monopole will be located a minimum of 93'5" from the nearest Property line. This demonstrates that if the tower were to topple, it would fall within the Property lines not harming adjoining properties.

- (2) All telecommunication facilities, including extension towers added to existing structures must be set back from all Property lines a distance equal to the height of the tower, including the extension, if applicable. This standard shall not apply to city owned water towers, high voltage electric transmission towers, or athletic lighting structures. The Zoning Board of Appeals may modify this setback distance, but not to a distance less than the fall zone of the support structure as demonstrated by a structural engineer licensed in the State of Maryland through submission of a signed and sealed structural analysis or specifications from the support structure manufacturer.

Applicant Responds: The proposed monopole meets the setbacks for this site. The height of the proposed monopole is 90 feet. The monopole will be setback 93' 5" from the nearest Property line, which is the right of way with interstate 270.

Staff Response: The Applicant has fulfilled this requirement by providing the appropriate setback.

- (3) Fencing may be provided to secure the telecommunications facility. No barbed wire or razor wire fencing is to be permitted in residential areas. All fences or other structures on the Property accessory to the telecommunications facility shall be no closer than fifty (50) feet to a Property line, except for city owned water towers, high voltage electric transmission towers, or athletic lighting structures. Any parking space required by §607 and accessory to the telecommunications facility shall be no closer than fifteen (15) feet from the street or to other a Property unless a residentially zoned Property is adjacent to the site in which case the distance shall be twenty-five (25) feet. Screening of accessory equipment may be achieved by enclosure in a structure architecturally compatible with the area in which the site is located or by vegetative buffering. Fences and parking areas accessory to the telecommunications facility shall be screened by Level I screening. Level III screening shall be used on sites that are adjacent to residentially zoned Property. The Zoning Board of Appeals may modify these setbacks if it is determined that fencing and screening will adequately buffer the facility from adjoining properties and that there will not be a negative impact to an adjoining Property.

Applicant Responds: The compound will be surrounded on all sides with a 7' tall chain link fence. There will be approximately 1' of barbed wire at the top; as this site is not located in a residential zone, the barbed wire is not prohibited. The fenced enclosure will be setback from the nearest Property line by approximately 70'. All equipment and parking will be located within the compound, and be accessible by a 14' wide gate.

Staff Response: The site is surrounded by non-residentially zoned properties and is located in the MO district. The site lies well within the interior of the Property as well. With that considered, the Applicant has provided the appropriate Level I screening consisting of 5 evergreen or deciduous trees per 100 lineal feet. This buffer surrounds the fenced equipment enclosure as demonstrated on the plan.

- (4) For antennas and accompanying equipment buildings or cabinets, screening shall be provided as required by the Board.

Applicant Responds: As explained above, Verizon Wireless proposes to surround the compound on 3 sides (not on the access gate side) with 9 evergreen trees to screen the compound. The Property is not directly adjacent to any residentially zoned properties. In this manufacturing/office zone, and considering surrounding uses, no additional screening of either the monopole or the equipment cabinet should be necessary.

Staff Response: See Staff response to #3 above.

- (5) No new telecommunications facility may be established if there is a technically suitable space available on an existing communications tower within the geographic area that the new site is to serve. The applicant shall demonstrate that a diligent effort has been made to co-locate the proposed telecommunications antennas in the GC, PB, MO, M1, M2, PRK and IST

districts, and that due to valid considerations, including physical constraints and technical feasibility, no appropriate location is available in those districts. The applicant shall support this demonstration with a map acceptable to the Planning Department showing the area in which it needs to locate a tower(s), and all existing city owned water towers, other existing athletic lighting structures, over sixty (60) feet in height, on public land and communications towers within the at area of sufficient height to support its antenna(s). The applicant shall also describe why those existing city owned water towers other existing athletic lighting structures, over sixty (60) feet in height, on public land and communications towers were not appropriate.

Applicant Responds: This site is primarily a coverage site. As the map accompanying this application illustrates, there is a large gap in coverage in this location. There are sites located in surrounding areas, including the Jefferson Street light pole to the north, Verizon Wireless towers to the southeast (New Design Road and Frederick Junction) and West (Feagaville), and a stadium light pole to the southwest (Tuscarora High School). There are no other viable structures, water tower, transmission towers or lighting structures close enough to this location to cover the gap. In addition, the proposed monopole will provide a structure to allow other carriers to collocate on in the future, while closing the gap in coverage in the area. Without the site, the Verizon Wireless network will lack the coverage necessary to meet the demand of its wireless customers in this area. This site was selected as the most effective within the search ring, the defined geographical area in which a site is needed in order to correct the coverage gap problem.

The Applicant studied the potential for collocating on other structures within the geographic area the site is to serve. Included with this application is a map identifying nearby structures. The proposed site is identified by a yellow pin marker. None of the other possible structures in the area were suitable. The transmission towers shown are located too far to the south to provide the coverage and capacity needed along I-70, and in addition are located too close to another Verizon Wireless site at Tuscarora High School. The site is centrally located in the middle of the 5 existing sites shown. There are no existing water towers in the area. In addition, there are no particularly tall buildings in the area. One building, located on the north side of I-70, is approximately 4-5 stories. However, Verizon Wireless RF engineers ruled this site out as being too far North/West to meet the network need.

Staff Response: Staff concurs with the Applicant's statement. The purpose in this case is to bring expanded service capabilities to the immediate location. The service area is not able to be expanded through co-locational means and therefore, new construction becomes the Applicant's only option at this time.

- (6) Communications antennas to be co-located on city owned water towers or athletic lighting structures; over sixty (60) feet in height, on public land shall be the color of the background tower or athletic lighting structure in order to minimize visibility. The applicant shall minimize the visibility of antennas and**

equipment cabinets through careful design, siting and screening where appropriate. The applicant shall provide drawings or photographs showing existing and proposed equipment on the water tower, high voltage transmission towers, or athletic lighting structure. Applicant shall also demonstrate that the antennas or telecommunications facility will not have an adverse effect on the historic vistas of the City. No telecommunications facilities are permitted in the Historic District. A balloon test shall be taken in areas where historic vistas, gateways to the City or other significant City landmarks may be affected by the location of an antenna or telecommunications facility. Photo documentation of the balloon test taken at the site shall be submitted for the Zoning Board of Appeals' review and approval.

Applicant Response: The support structure and antennas have been designed to minimize visibility. The compound will be screened by 9 evergreen trees. The new pole will be neutral in finish and color. A balloon test was conducted on August 1, 2014 and photos of the balloon test, as well as simulations of the proposed monopole based on the test, are included with this application. The photo simulations also show that the proposed telecommunications facility is minimally visible in some locations, and has no impact on the City's historic vistas as the facility is not visible from the historic areas.

Staff Response: Included in the packet are photo simulations. Visual impacts from distances appear to be minimal under the current seasonal conditions.

- (7) The applicant shall provide a sealed statement from a structural engineer stating that the water tower, high voltage electric transmission towers or athletic lighting structure is strong enough to support the equipment proposed by the applicant and that the planned installation will be structurally sound.**

Applicant Responds: As the proposed monopole has no relation to a water tower, high voltage electric transmission tower, or athletic lighting structure, the structural report required in this section is not applicable. The zoning drawings, site plan and site details include details of the structure, which has been designed to accommodate the equipment of the applicant as well as 2 co-locators in the future.

Staff Response: Staff concurs with the Applicant's statement with one exception, the monopole appears to only permit a single co-locator in the future. Said letter is included in the record.

Review of the monopole construction safety will occur with the required building permit application prior to construction.

- (8) The applicant shall provide a sealed statement from a licensed professional radio frequency engineer stating that the antennas proposed meet the radio frequency safety standards as established by the regulating agency for such antenna(s).**

Applicant Responds: Included with this application is a signed and sealed statement from Paul Dugan, P.E., Registered Professional Engineer, stating that the antennas proposed for this telecommunications facility comply with electromagnetic field safety standards by a substantial margin (well below 1%) in all publicly accessible areas, that the proposed facility will comply with applicable exposure limits and guidelines adopted by the FCC governing human exposure to radio frequency electromagnetic fields, and that the proposed facility will be in full compliance with the standards of IRPA, FCC, IEEE, ANSI, and NCRP (all defined in Mr. Dugan's report). Mr. Dugan includes in his report the assumptions and data used to arrive at his conclusions.

Staff Response: Staff concurs with the Applicant's statement. Said letter is included in the record.

- (9) The applicant shall provide a copy of the lease or a letter of intent from the owner of the Property (including the appropriate authority of the City, County, State or Federal Government for the subject site if involving a City owned water tower, high voltage electric transmission tower or athletic lighting structures over sixty (60) feet in height on public land). The applicant shall also include the duration of the lease, if the term is not stated within the body of the lease. If the lease does not so require, the applicant shall agree to remove the telecommunications facility or antennas in accordance with the provisions of paragraph (13)D of this Section 866(A). If the site of the proposed telecommunications facility or antenna co-location is located on City Property, the project must be in conformance with the City's Antenna Policy.**

Applicant Responds: A redacted copy of the proposed lease with ACE, LLC is included with this application. The lease is for an initial term of five (5) years, with five (5) automatic five (5) year renewal periods, unless Verizon Wireless, notifies the Landlord, in writing of its intention not to renew at least six (6) months prior to the expiration of the then existing term. Under the lease, upon expiration of the Term, or within ninety (90) days after earlier termination of the Lease, Verizon Wireless will remove its buildings, the antenna structure (except footings), equipment, conduits, fixtures and all personal Property and return the Premises (as defined in the Lease) to its original condition, reasonable wear and tear and casualty damage excepted.

Staff Response: The Applicant has provided the necessary documentation and it is included in the record.

- (10) All telecommunications facilities must comply with the applicable local, state, and federal rules and regulations.**

Applicant Responds: The proposed telecommunication facility will comply with all applicable local, state, and federal laws rules, and regulations.

Staff Response: The Applicant has certified per the justification statement that all applicable regulations will be followed.

(11) For purposes of this section, the term “public land” means any Property owned by the City, County, State or Federal governments. For purposes of this Section 866 (11), the term athletic lighting structure means a lighting structure for an athletic facility. “Telecommunications facility” shall have the meaning set forth in Article 10, Definitions of this LMC. Applicants shall file an agent authorization letter from the responsible government agency identifying its interest in the Property and granting the applicant permission to seek the conditional use.

Applicant Responds: The proposed telecommunications facility will be installed on private land as opposed to public land, and therefore, the requirements of this section of the LMC are not applicable.

Staff Response: This application is not subject to this requirement.

(12) A new telecommunications facility may exceed the maximum height permitted within all R districts after a determination by the Zoning Board of Appeals that its visual profile and appearance would make no substantial change in the character of the area, provided, however, that in no event shall the maximum allowed tower height exceed 199 feet.

Applicant Responds: The telecommunications facility is designed to be 90' to the top of the tower, well below the 199' maximum allowed. Although the balloon test and simulation photos show that the tower will be somewhat visible from certain locations, it does not dominate the view in any respect. Other objects, such as utility poles, trees, and buildings are present in the area and help to obscure the view of the monopole.

Staff Response: The maximum permitted height in a residential district- defined as the RC, R4, R6, R8, R12, R16, R20, RO, and DR- is 65'. The proposed facility is to be constructed at 90'. Photo simulations have been provided for the Board's consideration.

(13) For any application, the following is required:

A. The applicant shall publish a notice of the proposal, using a block advertisement of acceptable size which shows a map of the site and a 500 foot radius.

Applicant Responds: Included with this application is a notice of proposal, previously submitted to staff for approval, which approval remains pending. The notice will be published in the Frederick News Post after filing this application. A certificate of publication will be provided.

Staff Response: The Applicant met all advertising requirements.

- B. The applicant for a telecommunications facility shall hold an informational meeting in the area of the tower within two weeks of submitting the application. Written notice of such meeting shall be provided to all abutting Property owners within a three hundred (300') radius of the Property on which the site is located and the relevant NAC as determined by the City.**

Applicant Responds: The applicant will hold an informational meeting as part of the regularly scheduled NAC 10 meeting, on May 18, 2015. A copy of the written notice of the meeting, to be mailed to all abutting Property owners, Property owners within a 300' radius of the field, and NAC 10 members, is included with this application.

Staff Response: The Applicant met the mailing requirements and an informational meeting was held on May 18, 2015 at the NAC 10 meeting.

- C. The applicant shall maintain the telecommunications facility in a safe condition.**

Applicant Responds: The applicant will maintain the telecommunications facility in a safe condition.

Staff Response: Staff believes the Applicant understands this requirement.

- D. The telecommunications facility or antennas co-located on a water tower, high voltage electric transmission tower or athletic lighting structure shall be utilized continuously for wireless communications. In the event the telecommunications facility or antennas co-located on a water tower, high voltage electric transmission tower or athletic light structure ceases to be used for wireless communications for a period of one year the approval will terminate. The applicant shall remove all wireless communications equipment within 90 days thereafter. In the case of communications antennas co-located on a water tower, high voltage electric transmission tower or athletic lighting structure, the applicant shall remove all wireless communications equipment and return the water tower, high voltage electric transmission tower or athletic lighting structure to its preexisting condition, reasonable wear and tear excepted. In the event the telecommunications facility or antennas co-located on a water tower, high voltage electric transmission tower or athletic lighting structure ceases to be used for wireless communication, the applicant shall notify the Planning Department in accordance with Section 301(e)(1) of the LMC when such use initially ceases.**

Applicant Responds: If the antennas are not used for telecommunications purposes for a continuous period of one year, they will be removed by antenna owner. Please see note #10 on the site plan (sheet C-1) accompanying this application.

Staff Response: This application is not subject to this requirement.

- E. All new telecommunications facilities shall be designed for co-location, which shall mean the ability of the structure to allow for the placement of antennae for two or more carriers. The ZBA may waive this provision if the co-location will have an adverse impact on the surrounding area.**

Applicant Responds: The telecommunications facility has been designed to accommodate the antennas of 2 additional co-locators in the future, as demonstrated by the site details drawing included with this application.

Staff Response: The site plan indicates the ability to provide space for two carriers and not three per the Applicant's statement. Nonetheless, the requirement is met.

- F. The applicant shall provide a justification as to why this site was selected.**

Applicant Responds: This site was selected to primarily to provide coverage, while also aiding capacity. Although there may be a good wireless signal in the surrounding areas, the existing sites cannot handle fill in the gap that exists in the central area which these other sites surround, and as a result, capacity cannot be eased at those other sites either. In addition to filling in the coverage gap, this site is needed to relieve traffic from these other sites. The presence of the other sites ringing the proposed site is evidence that this is an area with large coverage and capacity demand, not being met by existing sites.

Staff Response: The maps provided with the application depict the coverage necessary for service at this location. It is understood that service issue exists based on the Applicant's testimony.

- G. The applicant shall provide a study showing the service area and system coverage.**

Applicant Responds: Maps showing the service area and system coverage are included with this application. The maps indicate a gap in the central area that will be addressed by this proposed facility.

Staff Response: See above noted response regarding current and future coverage levels.

- H. The applicant shall provide photo simulations of the telecommunications facility or co-location of antennas proposed on a water tower, high voltage electric transmission tower or athletic lighting structure including equipment areas at the base from at least two directions and from a distance of no more than one mile.**

Applicant Responds: Photo simulations of the telecommunications facility and the equipment area are provided with this application.

Staff Response: The Applicant has provided the necessary photo simulations.

- I. The applicant shall provide an inventory of all existing telecommunication facilities and telecommunication antennas within a one mile radius of the proposed site and document why co-location on an existing telecommunication facility or other structure is not possible.**

Applicant Responds: This requirement has been addressed under number 5, above.

Staff Response: Staff concurs with the Applicant's assessment. The coverage maps indicate a gap in service for the provider that cannot be closed through co-location.

- 14. The applicant shall file an FAA Form 7460 -1 Notice of Proposed Construction or alteration where the proposed telecommunications facility or telecommunication antenna is within three miles of the Frederick Municipal Airport as required by Federal Aviation Administration Part 77.13.**

Applicant Responds: An FAA Form 7460-1 Notice of Proposed Construction was filed, and the application approved (Form 7460-1 for ASN: 2009-AEA-34-OE).

Staff Response: This information is incorrect and provided in error. As provided in other documentation, the proposal is exempt from the FAA filing requirements. In these cases, Staff requests that the Applicant seek confirmation from the Maryland Aviation Administration that the application meets the safety requirements out of concern for The City of Frederick Municipal Airport (FDK). Contact with MAA has been made and Staff is awaiting documentation of compliance with the applicable criteria. Final confirmation must be received prior to construction.

PUBLIC NOTICE

This project met the public notice requirements as stipulated in §301(b) of the General Procedural Requirements of the LMC. "Application of ZBA public hearing" notices were sent by the applicant to Property owners that were adjoining and/or abutting the subject site as well as those within 300' of the subject Property within the required two weeks after the application's acceptance by the Planning Department. Notice of the conditional use request was published in the Frederick News-Post prior to June 8, 2015. The Property was properly posted with signage indicating the date of the hearing prior to June 8. As of this writing, Staff has received no responses in favor or opposition to this request.

STAFF RECOMMENDATION

FINDING OF FACTS

- The subject Property is zoned MO and is within the HNO.

- Per Section 404, Table 404-1, the *Use Matrix*, telecommunications facilities-defined as “Any facility, excluding a satellite television dish antenna, established for the purpose of providing wireless voice, data or image transmission within a designated service area. A telecommunications facility consists of one or more antennas attached to a support structure or related equipment. Equipment may be located within a building, an equipment cabinet, or an equipment room within a building.” – are a conditional use in the MO zoning district.
- The Applicant proposes to construct a monopole with a finished height of 90’ and the 8’ fenced enclosure measures 50’x 50’. The monopole will allow for two telecommunications carriers (one carrier in addition that proposed at this time).
- The Zoning Board of Appeals may grant approval of a conditional use for a telecommunications facility provided that all criteria outlined in §308 and §866 of the LMC are met.

STAFF RECOMMENDATION

Based upon the finding of facts, staff supports conditional approval of **ZBA15-357CU** finding that:

- 1) The proposed facility will not generate more noise, traffic, pollution, smoke, dust or other adverse impact on adjacent properties greater than that of uses permitted in the MO district, not requiring conditional use approval.
- 2) Based on the documentation supplied by the Applicant, the proposed equipment will not be a hazard to adjacent properties or constitute a nuisance because of radio interference or other potentially disruptive activity associated with the operation of the antenna.
- 3) The proposed monopole is located at greater distances from the Property lines than the height of the monopole.
- 4) The documentation supplied by the Applicant demonstrates that there are no technically suitable spaces available on an existing communications towers within the geographic area that the new site is intended to serve.
- 5) Based on the photographs provided, the Applicant has demonstrated that the proposed telecommunications facility will not have an adverse impact on the historic vistas, City gateways or other significant City landmarks.
- 6) That, per the statement from the engineer, the antennas proposed meet the radio frequency safety standards as established by the regulating agency for such antenna(s).
- 7) That the Applicant has provided approval from the Property owner to locate the facility on the Property and the Applicant has agreed to the removal of the facility per the provisions of paragraph (13)(D) of Section 866(a).
- 8) That the Applicant has provided guarantees that the telecommunications facilities will comply with the applicable local, state, and federal rules and regulations.
- 9) The Applicant has filed an agent authorization letter signed by the A.C.E., LLC identifying its interest in the Property and granting the Applicant permission to seek the conditional use.

- 10) The proposed telecommunications facility will exceed the maximum height permitted in residential zoning districts and has demonstrated that its appearance will make no substantial change to the area.
- 11) That the Applicant has fulfilled all of the public notice requirements mandated under Section 866(a)(13)(A-B).
- 12) That the Applicant has indicated that they will maintain the facility in good condition.
- 13) That the proposed telecommunications facility has been designed with the ability for co-location of one additional carrier.
- 14) That the Applicant has provided testimony indicating that co-location is not an acceptable solution to the issue and justifying the proposed site.
- 15) The Applicant is exempt from filing an FAA Form 7460-1, but will receive the necessary confirmation from the Maryland Aviation Administration (MAA) prior to building permit approval.

Approval is conditioned upon:

- 1) The Applicant must receive all necessary Maryland Aviation Administration approvals.
- 2) The Applicant must submit and receive approval of a final site plan for the facility.
- 3) In accordance with Section 312 of the LMC, *Zoning Board of Appeals Decisions*, the Applicant must receive a zoning certificate establishing the use within two years of the approval date or the approval shall become void.